

OBSTRUCTIONS IN STREAMS
K.S.A. 82a-301 to 305a
2004

82a-301. Permit or consent of chief engineer required to construct dams or other water obstructions; exceptions. (a) Without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: (1) Construct any dam or other water obstruction; (2) make, construct or permit to be made or constructed any change in any dam or other water obstruction; (3) make or permit to be made any change in or addition to any existing water obstruction; or (4) change or diminish the course, current, or cross section of any stream within this state. Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer. Jetties or revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

(b) As used in K.S.A. 82a-301 *et seq.*, and amendments thereto, “dam” means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and also has the capacity to impound 50 or more acre feet. The height of a dam or barrier shall be determined as follows: (1) A barrier or dam that extends across the natural bed of a stream or watercourse shall be measured from the down stream toe of the barrier or dam to the top of the barrier or dam; or (2) a barrier or dam that does not extend across a stream or watercourse shall be measured from the lowest elevation of the outside limit of the barrier or dam to the top of the barrier or dam. (History: L. 1929, ch. 203, Sec. 1; L. 1978, ch. 431, Sec. 6; April 11; July 1, L. 2002, ch. 138.)

82a-301a. Exclusive regulation and supervision of dams and other water obstructions by chief engineer. It is the intent of the legislature by this act to provide for the exclusive regulation of construction, operation and maintenance of all dams or other water obstructions by the state to the extent required for the protection of public safety. All dams or other water obstructions are declared to be under the jurisdiction of the division of water resources of the Kansas department of agriculture and the chief engineer thereof. The chief engineer or his or her authorized representative shall supervise the construction, modification, operation and maintenance of dams or other water obstructions for the protection of life and property. (History: L. 1978, ch. 431, S. 1; April 11.)

82a-302. Same; maps, plans, profiles and specifications to accompany application. (a) Each application for the consent or permit required by K.S.A. 82a-301, and amendments thereto, shall be accompanied by complete maps, plans, profiles and specifications of such dam or other water obstruction, or of the changes or additions proposed to be made in such dam or other water obstruction, the required application fee as provided in subsection (b) unless otherwise exempted, and such other data and information as the chief engineer may require. The chief engineer shall maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit required by K.S.A. 82a-301, and amendments thereto. Such list may include licensed professional engineers employed by a local unit of government. Notwithstanding any law to the contrary, an applicant for the consent or permit required by K.S.A. 82a-301, and amendments thereto, may have the application reviewed by a licensed professional engineer approved by the chief engineer pursuant to this subsection provided such engineer is not an employee of the applicant. If such licensed professional engineer finds that such dam or other water obstruction meets established standards for the construction, modification, operation and maintenance of dams and other water obstructions, such findings shall be submitted in complete form to the chief engineer. Upon such submittance, the chief engineer shall grant such consent or permit within 45 days unless the chief engineer finds to the contrary that such dam or other water obstruction does not meet established standards for the construction, modification, operation and maintenance of dams and other water obstructions. If the chief engineer declines to grant such consent or permit based upon a contrary finding, the chief engineer shall provide to the applicant within 15 days a written explanation setting forth the basis for the chief engineer’s contrary finding. The chief engineer’s action in

declining to grant such consent or permit and any hearing related thereto shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person aggrieved by any order or decision of the chief engineer shall be entitled to appellate review in accordance with the provisions of the act for judicial review and civil enforcement of agency actions. Such applicant shall pay all costs associated with the review by the licensed professional engineer.

(b) (1) The application shall be based upon the stage of construction at the time that a complete application has been submitted. The construction in progress fee shall be applicable for construction begun prior to approval by the chief engineer. Such fee shall be in addition to any other penalty for an unpermitted structure. Such fees shall be as follows:

Fees for new dam or dam modification applications

Pre-Construction
\$200

Construction in Progress
\$500

(2) Permit fees for stream obstructions/channel changes application fee is based upon two criteria and are as follows:

(A) The drainage area category; and

(B) the stage of construction when the application is submitted.

Drainage Area Category	Pre-Construction	Construction In Progress
Major (Drainage area greater than 50 square miles)	\$500	\$1000
Moderate (Drainage area 5 to 50 square miles)	\$200	\$400
Minor (Drainage area less than 5 square miles)	\$100	\$200
General Permit	\$100	\$200

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 75-4215, and amendments thereto. (History: L. 1929, ch. 203, S. 2; L. 1978, ch. 431, S. 7; April 11; July 1, L. 2002, ch. 138.)

82a-303. Same; conditions to permits; unlawful acts. The chief engineer of the division of water resources shall have power to grant or withhold such consent or permit or may incorporate in and make a part of said consent or permit such terms, conditions and restrictions as may be deemed by him or her advisable. It shall be unlawful to: (a) Construct or begin the construction of any dam or other water obstruction, or (b) make or begin any change or addition in any dam or other water obstruction, except in accordance with the terms, conditions and restrictions of such consent or permit, and such rules and regulations as may be adopted by the chief engineer of the division of water resources. (History: L. 1929, ch. 203, S. 3; L. 1978, ch. 431, S. 8; April 11.)

82a-303a. Rules and regulations by chief engineer. The chief engineer of the division of water resources of the Kansas department of agriculture shall adopt and may from time to time amend rules and regulations in order to establish standards for the construction, modification, operation and maintenance of dams and other water obstructions and to administer and enforce the provisions of this act. (History: L. 1978, ch. 431, S. 2; April 11.)

82a-303b. Inspection of dams by chief engineer; access to private property; costs of inspection. (a) (1) In order to secure conformity with adopted rules and regulations and to assure compliance with the terms, conditions or restrictions of any consent or permit granted pursuant to the provisions of K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief engineer or an authorized representative of the chief engineer shall have the power and the duty to inspect any dam or other water obstruction. Upon a finding pursuant to subsection (a) of K.S.A. 82a-

303c, and amendments thereto, by the chief engineer that a dam is unsafe, the chief engineer shall order an annual inspection of the dam until it is either in compliance with all applicable provisions of this act, any rules and regulations promulgated pursuant to this act, permit conditions and orders of the chief engineer; or the dam is removed. The safety inspection shall be conducted by the chief engineer or authorized representative and the cost shall be paid by the dam owner. The class and size of a dam provided for by the provisions of this act shall be defined by rules and regulations adopted by the chief engineer pursuant to K.S.A. 82a-303a, and amendments thereto. Inspection fees are as follows:

Size of Dam	Inspection fee
Class 1	\$1,500
Class 2	\$1,500
Class 3	\$2,500
Class 4	\$4,000

(2) Each hazard class C dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every three years, unless otherwise ordered by the chief engineer.

(3) Each hazard class B dam shall be required to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every five years unless otherwise ordered by the chief engineer.

(4) Within 60 days of the date of inspection, a report of the inspection shall be provided to the chief engineer by the licensed professional engineer who conducted the inspection. The report shall document the physical condition of the dam, describing any deficiencies observed, an analysis of the capacity of the dam and its spillway works, compliance of the dam with approved plans and permit conditions, changes observed in the condition of the dam since the previous inspection, an assessment of the hazard classification of the dam including a statement that the engineer either agrees or disagrees with the current classification, and any other information relevant to the safety of the dam or specifically requested by the chief engineer.

(5) Upon failure of a dam owner to comply with the applicable inspection interval, the chief engineer or such chief engineer's authorized representative shall conduct a mandatory inspection of the dam and the costs as established by this act for the inspection shall be paid by the owner, in addition to any other remedies provided for violations of this act.

(6) The failure to file a complete and timely report as required by the provisions of this act, or the failure to submit the fees assessed for inspections conducted by the chief engineer or such chief engineer's authorized representative shall be deemed a violation of this act and subject to the penalties provided by K.S.A. 82a-305a, and amendments thereto.

(b) For the purpose of inspecting any dam or other water obstruction, the chief engineer or an authorized representative of the chief engineer shall have the right of access to private property. Costs for any work which may be required by the chief engineer or the authorized representative prior to or as a result of the inspection of a dam or other water obstruction shall be paid by the owner, governmental agency or operator of such dam or other water obstruction.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in section 5, and amendments thereto. (History: L. 1978, ch. 431, S. 3; April 11; July 1, L. 2002, ch. 138.)

82a-303c. Violations of conditions or restrictions of permit or of rules and regulations; orders of chief engineer; remedial measures; emergency situations. (a) Whenever the chief engineer finds that: (1) The construction, modification, operation or maintenance of a dam or other water obstruction is in violation of adopted rules and regulations or of terms, conditions or restrictions of a permit or consent granted by the chief engineer or, (2) conditions exist in the construction, modification, operation or maintenance of a dam or other water obstruction which may present a hazard to the public's safety, he or she shall issue an order to require the correction of any such violation or condition existing in the construction, modification, operation or maintenance of a dam or other water obstruction by the owner or operator thereof. An order may be issued to require the removal of a dam or other water obstruction. The order shall contain the chief engineer's findings concerning any violation or conditions existing and shall prescribe the corrective action to be taken.

(b) Whenever the condition of any dam or other water obstruction is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to construction, modification, maintenance or operation thereof, or, the passing of imminent floods threaten the safety of any dam or other water obstruction, the chief engineer shall immediately employ any remedial means necessary to protect the safety of life or property. The chief engineer shall continue in full charge and control of any such dam or other water obstruction until the same is rendered safe or the emergency occasioning the remedial action has ceased. (History: L. 1978, ch. 431, S. 4; April 11.)

82a-304. (History: L. 1929, ch. 203, S. 4; L. 1933, ch. 330, S. 1; L. 1978, ch. 431, S. 9; April 11., 102 P.2d 1017; Repealed, July 1, L. 2002, ch. 138.)

82a-305. (History: L. 1929, ch. 203, S. 5; L. 1945, ch. 389, S. 1; Repealed, L. 1978, ch. 431, S. 10; April 11.)

82a-305a. Unlawful acts; penalties; injunction. (a) Any person, partnership, association, corporation or agency or political subdivision of the state government who violates any provision of this act or of any rule and regulation or order issued pursuant thereto shall be deemed guilty of a class C misdemeanor. Each day that any such violation occurs after notice of the original violation is served upon the violator by the chief engineer by restricted mail shall constitute a separate offense.

(b) Upon request of the chief engineer, the attorney general shall bring suit in the name of the state of Kansas in any court of competent jurisdiction to enjoin (1) the unlawful construction, modification, operation or maintenance of any dam or other water obstruction, or (2) the unlawful change or diminution of the course, current or cross section of a river or stream. Such court may require the removal or modification of any such dam or other water obstruction by mandatory injunction. (History: L. 1978, ch. 431, S. 5; April 11.)